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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,397

09/05/2003

Harry Herzog .

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 6300  
SEATTLE, WA 98104-7092

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/656,397

Applicant(s)

HERZOG, HARRY

Examiner

Justin M. Larson

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. In view of Applicant's arguments filed 2/22/06 with respect to the rejection of claim 13 under 35 USC § 103 using the Depot and Rivera references, Examiner has withdrawn that rejection and has set forth a new rejection with respect to claim 13, thereby making this action non-final.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-5, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Brame (4,856,149).

Brame discloses a fastener comprising: a first loop (14) made of an elastic material (col. 6 lines 7-10), thus having elastomeric threads woven therein that are capable of gripping a smooth cylindrical surface, and having a hook-and-loop fastener (30&32) for size adjustment; a second loop (12) having a hook-and-loop fastener (30&32) for size adjustment; and a means for coupling the first loop to the second loop (ultrasonic weld).

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Brame which is capable of being used in the intended

Art Unit: 3727

manner, i.e., with a power landscaping tool. There is no structure in Brame that would prohibit such functional intended use (see MPEP 2111).

Regarding the limitation set forth in claim 3, the loops are also disclosed as being nylon (col. 4 lines 33-36). Examiner considers nylon to be a strong, narrow, closely woven fabric - the definition of webbing. The loops (12&14) are therefore considered to be webbing straps, effectively satisfying this limitation.

4. Claims 1, 3-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Corder, Jr. (4,960,280).

Corder, Jr. discloses a support worn on a user's chest and limbs comprising: a buckle (D-ring); a first strap (A) having first and second ends (1&2), the first end (1) configured to pass through a first side of the buckle (the straight portion of the D-ring) and couple with VELCRO to the second end (2) to form an adjustable first loop; and a second strap (4) having a first end attached to the first strap at a point (7) in a middle region of the first strap, and a second end configured to pass through a second side of the buckle (the curved portion of the D-ring) and couple with VELCRO to itself to form a second loop (figure 3); and a series of stitches coupling a first end of the second loop to the first loop (col. 3 lines 37-40).

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Corder, Jr. which is capable of being used in the intended manner, i.e., with a power landscaping tool. There is no structure in Corder, Jr. that would prohibit such functional intended use (see MPEP 2111).

Regarding the limitation set forth in claim 3, the straps are fabric, a woven material, and thus considered by Examiner to be webbing.

Regarding the limitation set forth in claims 4 and 8, Corder, Jr., discloses that the straps are ideally elastic (col. 3 line 3), and they therefore must have elastomeric threads interwoven therein.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Antosh (US 5,910,004).

Antosh discloses a fastener for use with a tool, comprising: a first loop (3) including means (52) for gripping a smooth cylindrical surface of the tool (col. 3 lines 16-19) and means (4) for adjusting the first loop to a selected size; a second loop (1) including means for adjusting the second loop to a selected size (col. 3 lines 4-8); and means (2) for coupling the first loop to the second loop.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brame in view of Olsen (4,422,455).

Brame discloses the claimed invention except for the second loop further including a means for damping vibrations emanating from the tool. Olsen, however, teaches a looped member for wearing on a user's limb, the loop including a layer of

polyurethane open pore foam padding to protect the user's arm (col. 4 lines 64-68).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a layer of open pore, or sponge-like, foam padding in the loop to be placed on the user's arm, as taught by Olsen, to protect the user's arm and to make the loop more comfortable. Such padding would also dampen vibrations emanating from a tool placed in the other loop.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brame in view of Murphey et al.

Brame discloses the claimed invention except for the coupling means comprising a series of stitches coupling a first end of the second loop to the first loop. Murphey et al., however, teaches two loops (figure 3) fastened together where a series of stitches (31) couple a first end (47) of the second loop to the first loop (18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the loops of Brame could be attached with a series stitches, as taught by Murphey et al., in order to securely fasten the loops without the need for an ultrasonic welding machine which may not be as readily available as the needle and thread needed for stitching.

9. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Olsen.

Corder, Jr. discloses the claimed invention except for the second strap comprising a resilient member affixed to an inner surface thereof, configured to dampen vibrations transmitted by the support. Olsen, however, teaches a looped member for

Art Unit: 3727

wearing on a user's limb, the loop including a layer of polyurethane open pore foam padding to protect the user's arm (col. 4 lines 64-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a layer of open pore, or sponge-like, foam padding in the loop to be placed on the user's arm, as taught by Olsen, to protect the user's arm and to make the loop more comfortable. Such padding would also dampen vibrations transmitted by any part of the support.

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Colin (5,110,023) and Murphy et al. (US2004/0084489).

Corder, Jr. discloses the claimed invention except for the buckle including first and second apertures, with the first strap passing through the first aperture, and the second aperture captured within a bight in the second end of the second strap to form the second loop. Colin and Murphey et al., however, teach that it is old and well known in the art to use a buckle with two apertures when passing straps there through to form one or more loops. Murphey et al. discloses a buckle (29) with two apertures for passing the ends of strap (18) through to form a single loop (figure 2), with the strap passing through a first aperture (19, figure 2) and the second aperture captured within a bight in the second end of the strap (23, figure 2). Colin discloses a buckle (4) with two apertures for passing the ends of strap (2) through to form two distinct loops (12&16), with the strap passing through the first aperture (24), and the second aperture captured within a bight in the second end of the strap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the

D-rings of Corder, Jr. with well known, art equivalent buckles, as taught by Colin and Murphey et al., passing one strap end through the first buckle aperture, and capturing the second aperture within a bight of the second end of a strap in order to form two distinct loops.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Gray (US 6,773,366).

Corder, Jr. discloses the claimed invention except for an elastomeric gripping surface affixed to a side of the first strap such that when the strap is formed into the first loop, the elastomeric gripping surface is on an inner surface thereof. Gray, however, also discloses a multi-loop device and teaches that a neoprene pad, an elastomeric material, is disposed on an inner surface of the loop that contacts the arm of the user to provide cushioning. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a neoprene pad in the arm loop of Corder, Jr., as taught by Gray, in order to provide some cushion and make the loop more comfortable on the user's arm.

***Response to Arguments filed 2/22/06***

12. Applicant's arguments regarding the elastic gripping means, or lack thereof, with respect to the Brame and Corder references have been fully considered but they are not persuasive. Applicant has asserted that there is no teaching in Brame or Corder that the elastomeric threads are woven in a way that permits them to function as gripping means. Examiner maintains the position that the elastic threads of both Brame and Corder satisfy the gripping means of Applicant's claim 1. Examiner agrees with



Applicant's admission to the fact that "elastic material such as that referred to in Brame and Corder is commonly used in garments or other applications that may come in contact with a user's skin or clothes. Accordingly, it is generally woven such that the resilient, elastomeric portion is encased in smooth, non-elastic material such as cotton or synthetic thread." This elastic material is an effective gripping means because the elastic material gives the entire loop an expansive/contractive property. When placed around a smooth cylindrical surface, the elastic material can serve to contract the loop around, or grip, the surface. There are currently no limitations in the claim that require the gripping means to be exposed on an exterior surface of the loop. At Applicant's request, Examiner points Applicant to US Patent No. 4,657,251 to Larsen. Larsen explicitly teaches that elastic material (7/8/9) enclosed in a fabric band (Figure 3) serves to increase the pressure of the band around the object to which it is attached (col. 4 lines 13-17).

In response to applicant's argument that Brame, Olsen, Murphey et al., and Corder, Jr. are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Brame, Murphey et al., Corder, Jr. and Applicant are all in the field of securing a loop structure to the limb of a user. Examiner notes that each of these references has different uses for the loop structure once secured to the user's limb, but is of the position that the idea of securing the loop to the

user's limb is a common feature, regardless of the loop's intended use. Olsen and Applicant are both concerned with providing a pad member on the loop that contacts a user's arm in order to improve the user's comfort. Applicant has argued that the claimed pad, or resilient member, is aimed to reduce vibrations. Applicant has disclosed that the reason for reducing the vibrations is to prevent injury to the user. Examiner considers the motives of preventing injury and making comfortable to in fact be the same motivation, that is, to improve the comfort of the user.

Applicant has asserted, "...the limitation is directed to means for damping, not to means for making comfortable. Neither reference has anything to say with regard to damping vibrations, and offers no motivation to seek a solution to such a problem." Examiner maintains the position that regardless of the motivation for providing a pad member, whether it is to dampen vibrations or to improve comfort, the pad inherently does both and is therefore an effective means for accomplishing both.

Applicant's arguments with respect to the loop size of Corder, Jr. have been fully considered but they are not persuasive. Applicant has asserted that the arm band loop would be too big to affix to a user's wrist. Examiner maintains the position that as long as the loop is larger in circumference than a user's wrist, it is affixable to that user's wrist.

In response to applicant's argument that there is no suggestion to combine the above-mentioned references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner relied on the knowledge generally available to one of ordinary skill in the art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note that a majority of the cited art relates to couplings between a user's arm and a tool.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
6/7/06

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER